BRITISH COLUMBIA

CONFLICT OF INTEREST COMMISSIONER

Paul D. K. Fraser, Q.C.

ANNUAL REPORT

2008 – 2009

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BRITISH COLUMBIA

The Honourable Bill Barisoff, MLA
Speaker of the Legislative Assembly
of British Columbia
Room 207, Parliament Buildings
Victoria, British Columbia V8V 1X4

Dear Mr. Speaker,

It is an honour to present the Annual Report of the Office of the Conflict of Interest Commissioner for 2008 – 2009.

This Report is submitted pursuant to section 15 of the *Members' Conflict of Interest Act*, Chapter 287 of the Revised Statutes of British Columbia.

Sincerely,

Paul D. K. Fraser, Q.C.
Commissioner

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I COMMISSIONER'S MESSAGE

On December 31, 2007, the Honourable H.A.D. Oliver, Q.C. ended more than ten years as British Columbia's Conflict of Interest Commissioner. Bert Oliver served this Province long and well in various capacities: as a practicing lawyer; Superior Court Judge; and an Officer of the Legislative Assembly.

The large crowd at his retirement reception in the Rotunda of the Legislative Buildings was there in recognition of his many years of service, his respect for the Legislative Assembly and its Members, and his good nature – to say nothing of his legendary eccentricities. His sage advice was informed by his understanding of the human condition and allowed him as Commissioner to successfully practice what he referred to as "preventative political medicine". His many friends will be pleased to know that he remains active and in good health.

On January 1, 2008, my five year term as Bert's successor began. I record my sincere thanks to him for his generosity and support in making the transition within the Office both pleasant and well informed.

Over the 18 years that the COI Office has been in existence, annual reports have been regularly filed, either on a calendar year or a fiscal year basis. The 2007 Annual Report was delivered to the Speaker of the House at the end of the fiscal year on March 31, 2008. This Report is for the period 2008 – 2009 and will be delivered to the Speaker before the end of the 2009/10 fiscal year. It describes the activity in the Office since my appointment as Commissioner at 75% of full-time.

The Office remains both small and busy and has undergone some organizational and administrative changes to better fulfill our mandate to serve the public interest as well as to provide disclosure and compliance service to the Members. The workload increased with

the expansion of the Legislative Assembly from 79 to 85 Members elected in May, 2009. At the same time, we have embarked upon various new initiatives to sort and index the many opinions prepared and delivered to Members who have sought confidential advice on compliance and disclosure issues over the past many years. We have also taken the planning and organizational steps to mechanize the Office and make the move to digital systems. We remain a largely paper Office, but are committed to take all necessary technical steps to increase our ability to electronically collect, manage and securely store information from Members. Our website has been enhanced and we have taken the formative steps to enable us to exchange electronic information with Members.

II ABOUT THE MEMBERS' CONFLICT OF INTEREST ACT AND THE OFFICE OF THE COMMISSIONER

British Columbia was one of the first provinces to enact comprehensive conflict of interest legislation in Canada. The *Members' Conflict of Interest Act* ("the *Act*") was introduced in 1990, and amended in 1992. Now, all of the provinces and territories as well as the federal government have enacted such legislation.

The *Act* covers all Members of the Legislative Assembly. It makes no distinction insofar as its broad coverage is concerned between Members of the Executive Council and Members of the House, but there are some sections that deal solely with the role and position of Members of the Cabinet, such as section 9, which deals with the prohibition against carrying on a business or a profession that would interfere with one's duties in the elected executive offices of government. The *Act* also imposes restrictions on the private activities of former Ministers and Parliamentary Secretaries following their retirement from office.

Definition

The definition of a conflict of interest is found in section 2(1) and 2(2). The latter provision was the result of a 1992 amendment and at that time, BC was the only jurisdiction in Canada to include an *apparent* conflict of interest in its legislation.

> 2(1) For the purposes of this Act, a member has a conflict of interest when the member exercises an official power or performs an official duty or function in the execution of his or her office and at the same time knows that in the performance of the duty or function or in the exercise of the power there is the opportunity to further his or her private interest.
>
> (2) For the purposes of this Act, a member has an apparent conflict of interest if there is a reasonable perception, which a reasonably well informed person could properly have, that the member's ability to exercise an official power or perform an official duty or function must have been affected by his or her private interest.

Prohibitions

There are four specific prohibitions in the *Act*:

First, a general prohibition against conflicts of interest:

> A member must not exercise an official power or perform an official duty or function if the member has a conflict of interest or an apparent conflict of interest. (s. 3)

Second, a prohibition against using insider information:

> A member must not use information that is gained in the execution of his or her office and is not available to the general public to further or seek to further the member's private interest. (s. 4)

Third, a prohibition against using one's influence inappropriately:

> A member must not use his or her office to seek to influence a decision, to be made by another person, to further the member's private interest. (s. 5)

Fourth, a prohibition against accepting extra benefits:

> A member must not accept a fee, gift or personal benefit, except compensation authorized by law, that is connected directly or indirectly with the performance of his or her duties of office. (s. 7(1))

Additionally, under section 19 of the *Act*, a complaint may be laid alleging a violation of section 25 of the *Constitution Act*. That section prohibits a Member, personally, or a corporation in which he or she alone or jointly with close family members holds shares carrying more than 30% of the votes for the election of directors, from accepting from the Crown "money for the supply to the government of any goods, service or work... ."

The Commissioner's Role

The cornerstone of the *Members' Conflict of Interest Act* is the appointment of a Commissioner, who is an independent Officer of the Legislative Assembly.

The Commissioner performs three separate but related roles:

First, the Commissioner acts as an adviser to Members. MLAs need to know what their obligations are and that the steps they have taken will fulfill those obligations.

Secondly, the Commissioner meets with each Member at least annually to review the disclosure of the Member's financial interests and general obligations imposed by the *Act*.

The third role of the Commissioner is to undertake investigations and inquiries into alleged contraventions of the *Act*.

Advice

The Commissioner's primary role is that of an adviser. Members make frequent requests for opinions about compliance. It is fair to say that the majority of requests come from Ministers, but not always. Generally, Members are seeking assurances that they are not running afoul of the various prohibitions set out in the *Act*.

A Member may, by application in writing, request that the Commissioner give an opinion and recommendation on any matter respecting the obligations of the Member under the *Act*. So, any Member can make that inquiry and the Commissioner has a responsibility to give an opinion on the question that has been submitted. If the Commissioner decides that a Member has or may have a conflict of interest, recommendations can be made specifying a time for compliance. The opinion and recommendations of the Commissioner are confidential, but they may be made public by the Member or by the Commissioner with the consent of the Member in writing.

Disclosure

Within two months of election and annually after that, every MLA must file a confidential disclosure statement with the Commissioner, in the form prescribed by the regulations. The disclosure statement must contain an accounting of the *nature* of the assets, liabilities and financial interests of the Member, the Member's spouse, minor children and any private corporations controlled by them. The disclosure requirements are the same for all Members. There is a form on which they list their assets, liabilities and sources of income. There is an accompanying form for those who have interests in private corporations.

Once the disclosure statement has been filed with the COI Office, the Member and spouse (if available) meet with the Commissioner to discuss his or her obligations under the *Act*. An annual meeting with the Commissioner is required for all Members (section 16(3)).

After meeting with the Member, the Commissioner must prepare a public disclosure statement containing all relevant information provided by the Member (and spouse if applicable). The public disclosure statement is then filed with the Clerk of the Legislative Assembly.

After filing, the Clerk makes the statement available to any person for inspection without charge and during normal business hours, and must provide a copy of the statement upon payment of a reasonable copying charge.

If a material change takes place in a Member's financial status (or that of a spouse or minor children) it must be disclosed in writing to the Commissioner within 30 days in a statement of material change, notice of which is then filed with the Clerk of the Legislative Assembly.

As a matter of comparative interest, a key difference between the BC legislation and the federal legislation is that under BC's requirements, disclosures are qualitative rather than quantitative. That is, Members must disclose the *nature* of the assets, liabilities, and financial interests, not the *value* or the amount or the worth of those interests. Commissioner Ted Hughes in his first annual report found this to be satisfactory. In his judgment, it is the ownership of an asset that could trigger the possibility of a conflict, not the value or the amount of it. Commissioner Hughes also opined that the willingness of Members to cooperate with the disclosure requirements was, in part, due to the fact that they do not have to divulge the value of their assets.

Investigation and Inquiry Powers

The Commissioner has the authority to conduct an Inquiry upon receiving a request for an opinion (s. 21), based on an allegation of a contravention of the *Act* or, as noted above, of section 25 of the *Constitution Act*. There is no ability to launch an investigation into a perceived contravention on the Commissioner's own initiative. The request must come

from a Member of the Legislative Assembly, or a member of the public. Additionally, the Executive Council may request an opinion on a matter of compliance of the Executive Council, and the Legislative Assembly may also request an opinion on any matter respecting the compliance of a Member (s. 19).

The Office receives complaints from Members and from members of the public. Research must be done to ascertain whether a complaint has merit and can be substantiated. This stage of our process is called the "Preliminary Assessment". Usually, we can fairly quickly determine whether a complaint should proceed to the investigation stage or be dismissed as unwarranted.

When an investigation proceeds, it will be determined during its course whether the seriousness of the matter and the available evidence necessitate a formal Inquiry. A formal Inquiry is a slow, burdensome, and costly process only to be embarked upon when the public interest demands it.

If an Inquiry is held under 19(1) of the *Act*, the Commissioner reports to the House and, in an appropriate case, to make recommendations on what penalty might, subject to the decision of the House, apply.

Penalties

In British Columbia, the Commissioner may recommend sanctions against a Member, but the Legislative Assembly may accept or reject the recommendation. The possible penalties are enumerated (s. 22) and include a reprimand, suspension, a fine of up to $5,000, or a declaration that the Member's seat be declared vacant until an election is held in the Member's electoral district.

III ACTIVITIES DURING THE REPORTING PERIOD

The various activities of the Office can conveniently be categorized as follows:

(A) Public opinions prepared by the Commissioner in response to requests made under the *Act*;
(B) Confidential opinions of the Commissioner sought by Members and requests for information from all sources;
(C) Information collection and disclosure activity;
(D) Website and external communications;
(E) Miscellaneous.

(A) Public Opinions

The public opinion process contained in the *Act* can either be a complaint driven process under section 19(1) or (2); or a request from the Executive Council for an opinion, under section 19(3); or a request for an opinion from the Legislative Assembly under section 19(4); or a request under section 18 by a Member for an opinion or recommendation, which the Member may chose to make public. During the reporting period, there were three requests under section 19(1) by Members respecting the compliance of other Members with the provisions of the *Act*; one request by a member of the public respecting alleged contravention; and one request under section 18(1) by a Member respecting his obligations under the *Act*, which the Member chose to make public. No requests were received for opinions from either the Executive Council or the Legislative Assembly.

One of the requests by a Member under section 19(1) was resolved almost immediately at the preliminary stage. The remaining two requests under section 19(1) were fully investigated by the Commissioner and the results have been posted on our website with the following descriptions:

- IN THE MATTER OF A REQUEST BY LEONARD KROG, MLA FOR NANAIMO, UNDER SECTION 19(2) OF THE MEMBERS' CONFLICT OF INTEREST ACT TO REVIEW THE ALLEGED ACTIONS OF THE EXECUTIVE COUNCIL UNDER SECTION 8(1)(a) OF THE ACT – February 25, 2009

- IN THE MATTER OF AN APPLICATION BY GUY GENTNER, MLA FOR DELTA NORTH, WITH RESPECT TO ALLEGED CONTRAVENTIONS OF THE MEMBERS' CONFLICT OF INTEREST ACT BY THE HONOURABLE GORDON CAMPBELL, MLA FOR VANCOUVER-POINT GREY, PREMIER OF BRITISH COLUMBIA – April 2, 2009

A request by a Member under section 18 was fully investigated by the Commissioner on the basis that the opinion would be made public. With the agreement of the Member, the opinion was posted on our website and described as follows:

- IN THE MATTER OF A REQUEST BY THE HONOURABLE MEMBER FOR FORT LANGLEY-ALDERGROVE, RICH COLEMAN, WITH RESPECT TO ANY APPEARANCE OF CONFLICT OF INTEREST UNDER SECTION 2(2) OF THE MEMBERS' CONFLICT OF INTEREST ACT – September 16, 2008

(B) Confidential Opinions of the Commissioner Sought by Members and Requests for Information from all Sources

By far the greatest portion of the Commissioner's time is taken up by informal, confidential meetings with Members of the Assembly, and of Cabinet to discuss Members' problems or potential problems under the statute or to provide assistance to Members in identifying future problems not readily observable at first glance, all with a view to their avoidance. It is in the exercise of this informal and confidential consultative function that, arguably, the most valuable and effective work is done.

The Office has always kept careful records of formal requests for opinions and of oral and written opinions or advice given. Many requests for information from the public and from MLAs and their staff are received. Some of these requests are very

preliminary – others are casual and don't proceed beyond the initial phone call or email. Others are more substantial and involve a follow-up. In all of these circumstances, accurate classification and record keeping is difficult; however commencing in 2010 we will be keeping numerical track of calls and inquiries received. The following statistics are accurate with respect to formal requests and advice, but represent our best estimate of other requests for information during the reporting period:

Requests Received for:		
General Information		
from MLAs and their staff	240	average estimate 10/month
from public	240	average estimate 10/month
TOTAL	**480**	
Formal Requests for Opinions (s. 19)		
from MLAs	3	
from public	17	including 14 requests on non-jurisdictional issues
TOTAL	**20**	
Advice - Oral and Written (s. 18)		
to MLAs	81	
TOTAL	**81**	

(C) Disclosure Related Activity

The mandatory disclosure requirements contained in the *Act* are labour intensive for our Office. Particularly is that so in a year when there has been a general election and disclosure forms must be distributed, completed by Members and collected by our Office within 60 days of Members being elected. Those Members appointed to the Cabinet must also comply with the provisions of section 9 of the *Act* within 60 days of being appointed. These tight timelines mean that cooperation by the Members is essential in completing the confidential disclosure forms, returning them to our Office and being available for the compulsory annual

interview with the Commissioner that is required under the *Act*. Fortunately for our Office, that cooperation was forthcoming during the reporting period.

In 2008, the interviews with Members were conducted in a five-week period in September and October, and all of the completed Public Disclosure Statements filed with the Clerk at the same time on November 28, 2008. In 2009, the interview period was more protracted and lasted seven weeks from the beginning of September until the third week in October. All of the completed Public Disclosure Statements were filed with the Clerk of the House at the same time on November 27, 2009.

During the reporting period there were two bi-elections in the fall of 2008. There were also 27 new Members elected in the general election of May 12, 2009. In order to assist in the disclosure process and in the provision of accurate information, the Commissioner met with both successful bi-election candidates and with all of the new Members in their separate Caucus groups in the summer of 2009 following the general election.

Part of the disclosure process includes the creation of blind trusts by those Members who chose to do so. The Office has become increasingly involved in working with Members and their professional advisors to ensure that legal and accounting arrangements are in compliance with the *Act*. In 2009, the Office spent considerable time revising a template for prospective use in the creation of blind trusts and the setting up of "hold mail" brokerage accounts for those Members who wish to give all investment discretion to their investment advisors without reporting requirements.

(D) Website and External Communication

During the reporting period our website was updated regularly and the following information posted:

- A new Ethics Bulletins page containing the following guidelines issued to Members to assist in dealing with their obligations under the *Act*:

    1. Membership, Directorship, Office or Patron in Charitable/Non-profit/Social/Community Organizations
    2. Complimentary Memberships and Passes
    3. Material Change Guidelines
    4. Commissioner's Directive – Ownership of Mutual Funds
    5. Members' Guide to Accepting Gifts During the 2010 Olympic Games
    6. Ethics Bulletin No. 1 – Post-Employment
    7. Ethics Bulletin No. 2 – Use of Constituents' Names, Addresses, Email Addresses and Telephone Numbers for Party Political Purposes
    8. Ethics Bulletin No. 3 – Members' Travel
    9. Ethics Bulletin No. 4 – Procedure on Conflict of Interest

    The policy of the Office is to post on the site all guidelines and directives given to Members dealing with compliance with the Act.

- A complete set of disclosure forms that Members are required to complete and file with this Office.

- Three public opinions released during the reporting period. All the public opinions decided in 2001 and later are posted on the site. The public opinions issued from 1991 to 2001 are being prepared to be placed on the site in 2010.

(E) Miscellaneous

- In March, 2008, an unstaffed satellite Office was opened in Surrey, British Columbia and connected electronically with our main Victoria office. The office was created to help minimize the Commissioner's travel expenses between Vancouver Island and the mainland and to convenience Members

living on the mainland. The set-up costs were minimal and the expected travel costs savings were realized over the course of the reporting period.

- In May, 2008, the Commissioner met in Vancouver with a delegation of Chinese government officials who were visiting Canada and wanting to understand the practice and application of our conflict of interest legislation. The session was organized by York University and resulted in a mutually beneficial exchange of views and information.

- During the reporting period, the Commissioner met twice with Legislative Interns who had been selected for the program that has been sponsored for more than 30 years by the Legislative Assembly. The meetings in February, 2008 and January, 2009 took place at the beginning of the six-month Intern program as part of the orientation.

- In February, 2009, the Commissioner spoke to the Administrative Law Section of the Canadian Bar Association on the practice and procedures followed by the Office in administering the *Act*.

- Our Office is part of the Canadian Conflict of Interest Network that includes the federal COI Commissioner and the Commissioners from all Canadian provinces and territories. Business meetings of the group are held annually in September. The Commissioner attended the meetings that were held in Quebec City in 2008 and Whitehorse in 2009, and is satisfied that the organization provides good value in terms of shared experiences and information.

- In June, 2009, the Commissioner was invited to participate in a so-called "expert panel" convened under the direction of the federal Inquiry into Certain Allegations Concerning Business and Financial Dealings of the Right

Honourable Brian Mulroney and Karlheinz Schreiber (the "Oliphant Commission"). He was joined by the federal Conflict of Interest and Ethics Commissioner, Mary Dawson; the Acting Integrity Commissioner for Ontario, Lynn Morrison; and the federal Commissioner of Lobbyists, Karen Shepherd. Each provided an overview of their mandate, jurisdiction and role to assist Commissioner Oliphant to understand how conflict of interest issues are addressed in their respective jurisdictions. There was a lively question and answer session involving the Commission and its researchers as well as those who had been given standing to participate at the Inquiry. For those who are interested, the link to view the proceedings can be found at: http://www.cpac.ca/forms/index.asp?dsp=template&act=view3&pagetype=vod&lang=e&clipID=2893. The Oliphant Commission is scheduled to release its final report in May, 2010.

- Section 7 of the *Members' Conflict of Interest Act* prohibits accepting a fee, gift or personal benefit that is directly or indirectly connected to the performance of an MLA's duties. Gifts and benefits received as a result of protocol or official duties are exempted from this rule, but must be disclosed if the value of the gift or benefit exceeds $250.00, or if the total value of gifts from a single source in a year exceeds $250.00.

  With the advent of the Olympics in 2010, the Office anticipated that many Members would be offered gifts and invitations related to the Games. Accordingly in December, 2009, we issued a brief Guide designed to assist Members to respond to such offers appropriately. The "Members' Guide to Accepting Gifts During the 2010 Olympics" is posted on our website.

- The Office has developed a more comprehensive Guide for Accepting Gifts which expands on the Commissioner's interpretation of Members' obligations under section 7 of the *Act*. The Guide will be published in early 2010 and will

highlight several topics and questions that Members commonly bring to our Office, such as when complimentary hospitality can be accepted and whether it is appropriate to keep or donate certain gifts. Although each situation is unique, it is hoped that the Guide will be a useful reference tool to help Members respond appropriately when offered a gift or personal benefit.

IV PRIORITIES FOR NEXT YEAR

In the year ahead, we expect to continue our efforts in some areas of our work, enhance our efforts in others and undertake new projects.

- We intend to increase communication with Members by anticipating frequently asked questions and providing guidelines to Members. An example will be the previously mentioned Guide for Members on "Accepting and Disclosing Gifts", which will be published early in 2010.

- We will continue to enhance the information contained on our website so that members of the public will be aware of guidelines that have been issued to Members from time to time.

- We will continue to create or take advantage of opportunities to engage with the public in order to explain the work of the Office.

- We value our association with the national Canadian Conflict of Interest Network and will continue to engage with COI Commissioners in other jurisdictions to enhance generic information sharing and the cross-pollination of empirical experience, with the hope that a databank of redacted confidential opinions, contributed to by the various jurisdictions across Canada, may be developed.

- In the absence of a mandatory review process in the *Act*, we will continue to seek the views of Members on potential reforms of the *Act*, particularly in the areas of its application and reach, penalty provisions and compliance.

- In order to support these continuing efforts, the administrative functions in the Office will continue to be streamlined and we will add part-time administrative staff where appropriate and where possible based on the budget approved for the Office by the Select Standing Committee on Finance and Government Services.

- The Member's confidential disclosure form will be redesigned and simplified to make the process of providing and obtaining disclosure information from Members easier and more functional. The present form is a Regulation to the *Act* and, in order to affect necessary changes, a regulatory amendment will be sought.

- One of the *new projects* we will undertake is to work with the Chief Electoral Officer to achieve greater harmonization between the disclosure information required of candidates under the *Election Act* and the disclosure obligations required of Members under the *Act* – so that those seeking election will be assisted to a better understanding of what disclosure will be necessary if they are successful.

- Another *new area of interest* has to do with the post-employment obligations of Members. The proceedings mentioned earlier at the Oliphant Commission provided a convenient opportunity to compare post-employment restrictions for those leaving Cabinet office at the federal and provincial levels.

  In British Columbia, former Members of the Executive Council and former Parliamentary Secretaries are subject to a two year "cooling-off" period after leaving office (s. 8 of the *Act*). During this time, they are generally prohibited from accepting a contract or benefit from government. They are also prohibited from making

representations with respect to such a contract or benefit, either on their own behalf or behalf of another person. However, these restrictions do not apply to contracts or benefits in respect of "further duties" in the service of the government. There are no enforcement or monitoring provisions in the *Act*.

In Canada, federal ministers and other reporting public office holders, such as parliamentary secretaries and deputy ministers, are also subject to a cooling-off period. The cooling-off period is two years for former ministers and one year for all other former reporting public office holders. During this time, they may not contract with, sit on the board of directors of, or accept employment with any entity outside the federal government with which they had direct and significant official dealings during the one year immediately prior to leaving public office. In addition, they may not make representations for or on behalf of another person to any department, organization, board, commission or tribunal with which they had direct and significant official dealings during that past year. For ministers, this prohibition extends to former cabinet colleagues. During the cooling-off period a former reporting public office holder must let the Conflict of Interest and Ethics Commissioner know when he or she has conducted certain lobbying activities.

All former federal public office holders are also expressly prohibited from taking improper advantage of their previous public office. They may not "switch sides" by acting for or on behalf of any person or organization in matters relating to a specific procedure, transaction, negotiation or case in which they previously acted for or provided advice to the government.

Another notable difference between Canada and British Columbia is that under federal legislation, reporting public office holders are required to disclose to the Commissioner, in writing, all "firm offers" of outside employment within seven days of the offer. They must also report acceptance of the offer within seven days. In the case

of a minister, he or she must also report acceptance of an offer to the Prime Minister. However under British Columbia's *Act*, there are no similar disclosure requirements.

Our Office is interested in and has been exploring options for discussing potential changes in the post-employment regime in British Columbia. The system in place in the United Kingdom since 1995 provides that guidelines on the acceptance of appointments or employment outside government by former ministers are interpreted by an independent body, the Advisory Committee on Business Appointments, whose members are appointed by the Prime Minister. The Committee provides advice directly to former ministers on the appointments they wish to take up within two years of leaving government. Its aim is to help provide assurance to the public and to former ministers themselves about the propriety of the jobs ministers take up on leaving government. Additionally, the Committee provides advice to the Prime Minister, the Foreign Secretary, or other ministers if requested, on applications from the most senior Crown servants who wish to take up outside appointments after they leave Crown service.

The Committee may advise that they see no objection to the proposed appointment, recommend a delay of up to two years before the appointment is taken up, or impose limitations on the type of activities that may be performed for the employer. Former Ministers do not need to seek the Committee's advice on accepting unpaid appointments in non-commercial organizations or appointments from the government.

All approaches to the Committee are treated in strict confidence and the advice remains confidential if the appointment is not taken up. However if the appointment is taken up, the advice is posted on the Committee's website and published in its annual report. After advice is given, there is follow-up to determine whether appointments have been taken up and if so, when. As the Committee has no ability to "police" compliance with the Guidelines or observance of advice given, compliance is

encouraged through media exposure and public embarrassment for those who do not seek or abide by the Committee's advice.

This system is currently under review in the U.K. We are monitoring that review to determine if the U.K. system might be a sensible idea for discussion in British Columbia.

V SUMMARY OF BUDGET AND FINANCIAL INFORMATION

The Select Standing Committee on Finance and Government Services ("the Committee") has the responsibility for considering and making recommendations on the budgets of this Office.

The following Budget Proposals were submitted to the Committee:

1. The Budget Proposal for fiscal years 2009/10 to 2011/12 sought an annual budget of $440,000. The Proposal was presented to the Committee on November 26, 2008. The Committee, in its Report dated December, 2008 recommended an operating budget of $440,000.

2. The Budget Proposal for fiscal years 2010/11 to 2012/13 sought an annual budget of $487,600. The Proposal was presented to the Committee on November 25, 2009. The Committee, in its Report dated December, 2009 recommended that an operating budget remain at $440,000.

Our Budget Proposals and the Committee's recommendations (which were accepted by the Legislative Assembly and by Treasury Board) are annexed to this Report as Appendices B and C.

VI ACKNOWLEDGEMENTS AND APPRECIATION

During the reporting period, there has been excellent cooperation from Members and their assistants in arranging disclosure meetings and providing the Office with the information and filings required by the *Act*. That cooperation has enhanced our productivity and response time and is much appreciated.

We also want to acknowledge the assistance and support that our Office has received from the Speaker and the Clerk of the House and their respective offices, as well as to the Caucus Chairs and their assistants. The Clerk of Committees, Craig James, has helped our Office navigate requests for information and responses with the various Committees of the House with which we interface.

We also want to acknowledge the good work of our Office colleagues:

Jill Robinson

January, 2009 marked the voluntary retirement of Mrs. Jill Robinson, who was an Executive Assistant to all of the Commissioners since the Office opened in October, 1990. Jill put the Office's policy of interfacing helpfully and courteously into daily practice with the Members, the Legislative community and the public. She willingly dispensed information and suggestions to those who contacted the Office by mail, telephone, email or in person. At her retirement reception, both the Premier and the Leader of the Opposition sent messages of appreciation to Jill for all her efforts.

The reputation that the Office has come to enjoy over the years with its constituents was enhanced by Jill's cheerful, thoughtful and helpful contributions, and I thank her most sincerely for myself and on behalf of my predecessors. We all wish her good health and happiness in the years to come.

Daphne Thompson

Ms. Thompson joined the Office in 1994 and thereafter was an Executive Assistant to all of the Commissioners to date. Her responsibilities have increased during this reporting period and on July 1, 2009, she was appointed as the Executive Coordinator in the Office. Her work is greatly valued and much appreciated.

Alyne Mochan

Ms. Mochan is a lawyer with past experience in the Office of the British Columbia Ombudsperson. She is now in private practice and joined our office in July, 2009 in a part-time contract position doing research and assisting in the preparation of materials. We are very fortunate to have her as a colleague.

During the reporting period, the Office has also obtained consulting advice on technical support, information technology and legal assistance, when required. We look forward to our continuing work in the service of the public and the Legislative Assembly of British Columbia.

APPENDICES

APPENDIX A MEMBERS' CONFLICT OF INTEREST ACT

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Members' Conflict of Interest Act

[RSBC 1996] CHAPTER 287

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Definitions

1 In this Act:

"child" includes a person to whom a member has demonstrated a settled intention to treat as a child of his or her family;

"commissioner" means the person appointed under section 14;

"member" means a member of the Legislative Assembly or of the Executive Council, or both;

"private corporation" means a corporation, all of whose issued and outstanding securities are subject to restrictions on transfer and are beneficially owned directly or indirectly by not more than 50 persons;

"private interest" does not include an interest arising from the exercise of an official power or the performance of an official duty or function that

(a) applies to the general public,

(b) affects a member as one of a broad class of electors, or

(c) concerns the remuneration and benefits of a member or an officer or employee of the Legislative Assembly;

"spouse" means a person who is married to a member or a person who is living with a member as husband and wife but does not include a husband or a wife who is separated and living apart from a member and who

(a) has entered into a written agreement under which they have agreed to live apart, or

(b) is subject to an order of the court recognizing the separation.

Conflict of interest

2 (1) For the purposes of this Act, a member has a conflict of interest when the member exercises an official power or performs an official duty or function in the execution of his or her office and at the same time knows that in the performance of the duty or function or in the exercise of the power there is the opportunity to further his or her private interest.

(2) For the purposes of this Act, a member has an apparent conflict of interest if there is a reasonable perception, which a reasonably well informed person could properly have, that the member's ability to exercise an official power or perform an official duty or function must have been affected by his or her private interest.

Conflict of interest prohibition

3 A member must not exercise an official power or perform an official duty or function if the member has a conflict of interest or an apparent conflict of interest.

Insider information

4 A member must not use information that is gained in the execution of his or her office and is not available to the general public to further or seek to further the member's private interest.

Influence

5 A member must not use his or her office to seek to influence a decision, to be made by another person, to further the member's private interest.

Activities on behalf of constituents

6 This Act does not prohibit the activities in which members normally engage on behalf of constituents.

Accepting extra benefits

7 (1) A member must not accept a fee, gift or personal benefit, except compensation authorized by law, that is connected directly or indirectly with the performance of his or her duties of office.

(2) Subsection (1) does not apply to a gift or personal benefit that is received as an incident of the protocol or social obligations that normally accompany the responsibilities of office.

(3) If a gift or personal benefit referred to in subsection (2) exceeds $250 in value, or if the total value received directly or indirectly from one source in any 12 month period exceeds $250, the member must immediately file with the commissioner a disclosure statement, in the form prescribed by the regulations, indicating

(a) the nature of the gift or benefit,

(b) its source, and

(c) the circumstances under which it was given and accepted.

Former members of Executive Council and former parliamentary secretaries

8 (1) The Executive Council, a member of the Executive Council or an employee of a ministry other than an employee of an agency, board or commission, must not knowingly

(a) award or approve a contract with, or grant a benefit to, a former member of the Executive Council or former parliamentary secretary, until 24 months have expired after the date when the former member of the Executive Council or former parliamentary secretary ceased to hold office,

(b) award or approve a contract with, or grant a benefit to, a former member of the Executive Council or former parliamentary secretary who has, during the 24 months after the date when the former member of the Executive Council or former parliamentary secretary ceased to hold office, made representations in respect of the contract or benefit, or

(c) award or approve a contract with, or grant a benefit to, a person on whose behalf a former member of the Executive Council or former parliamentary secretary has, during the 24 months after the date when the former member of the Executive Council or former parliamentary secretary ceased to hold office, made representations in respect of the contract or benefit.

(2) Subsection (1) (a) and (b) does not apply to contracts or benefits in respect of further duties in the service of the government.

(3) Subsection (1) does not apply if the conditions on which the contract or benefit is awarded, approved or granted are the same for all persons similarly entitled.

(4) A former member of the Executive Council or former parliamentary secretary must not, unless 24 months have expired after the date when he or she ceased to hold office,

(a) accept a contract or benefit that is awarded, approved or granted by the Executive Council, a member of the Executive Council or an employee of a ministry other than an employee of an agency, board or commission,

(b) make representations on his or her own behalf with respect to such a contract or benefit, and

(c) make representations on another person's behalf with respect to such a contract or benefit.

(5) Subsection (4) (a) and (b) does not apply to contracts or benefits in respect of further duties in the service of the government.

(6) Subsection (4) does not apply if the conditions on which the contract or benefit is awarded, approved or granted are the same for all persons similarly entitled.

(7) A former member of the Executive Council or a former parliamentary secretary must not make representations to the government in relation to any specific ongoing transaction or negotiation to which the government is a party and in which the former member of the Executive Council or former parliamentary secretary was directly involved if the representation would result in the conferring of a benefit not for general application.

(8) A person who contravenes subsection (4) or (7) commits an offence and is liable, on conviction, to a fine of not more than $5 000.

Carrying on business

9 (1) A member of the Executive Council must not

(a) engage in employment or in the practice of a profession,

(b) carry on a business, or

(c) hold an office or directorship other than in a social club, religious organization or political party

if any of these activities are likely to conflict with the member's public duties.

(2) A person who becomes a member of the Executive Council must comply with subsection (1) within 60 days of being appointed.

(3) The commissioner may extend the period referred to in subsection (2) by giving the member a written notice to that effect, and may impose on the extension conditions that the commissioner considers just.

(4) If a member of the Executive Council complies with subsection (1) (b) by entrusting his or her business to one or more trustees,

(a) the provisions of the trust must be approved by the commissioner,

(b) the trustees must be persons who are at arm's length with the member and approved by the commissioner,

(c) the trustees must not consult with the member with respect to managing the trust property, and

(d) within 60 days after the formation of the trust, and after that annually, the trustees must provide the commissioner with a confidential report, in a form acceptable to the commissioner, disclosing the assets, liabilities and financial interests contained in the trust.

(5) For the purposes of this section, the management of routine personal financial interests does not constitute carrying on a business.

Procedure on conflict of interest

10 (1) A member who has reasonable grounds to believe that he or she has a conflict of interest in a matter that is before the Legislative Assembly or the Executive Council, or a committee of either of them, must, if present at a meeting considering the matter,

(a) disclose the general nature of the conflict of interest, and

(b) withdraw from the meeting without voting or participating in the consideration of the matter.

(2) If a member has complied with subsection (1), the Clerk of the Legislative Assembly or secretary of the meeting must record

(a) the disclosure,

(b) the general nature of the conflict of interest disclosed, and

(c) the withdrawal of the member from the meeting.

(3) The Clerk of the Legislative Assembly or secretary of the meeting must file the information recorded under subsection (2) with the commissioner,

(a) in the case of a meeting of the Legislative Assembly or a committee of the Legislative Assembly, as soon as practicable, and

(b) in the case of a meeting of the Executive Council or a committee of the Executive Council, as soon as practicable after the Executive Council's decision on the matter which has been the subject of the disclosure is made public.

(4) The commissioner must keep all information filed under subsection (3) in a central record kept for that purpose and must

(a) make the central record available for inspection by any person without charge during normal

business hours, and

(b) on request by any person provide a copy of the record or portion of it on payment of a reasonable copying charge.

Performance of responsibilities by minister

11 (1) If, during the exercise of any official power or the performance of any official duty or function by a member of the Executive Council, a matter arises with respect to which the member has a conflict of interest or apparent conflict of interest, the member must

(a) refrain at all times from attempting to influence the matter, and

(b) at any subsequent meeting of the Executive Council or a committee of the Executive Council at which the matter is considered, disclose the general nature of the private interest and withdraw from the meeting without voting or participating in the discussion.

(2) The Lieutenant Governor in Council may appoint a member of the Executive Council to act in the place of a member referred to in subsection (1) for any matter with respect to which the member referred to in subsection (1) has a conflict of interest or apparent conflict of interest.

Voidability of transaction or procedure

12 The failure of any member to comply with section 10 does not of itself invalidate

(a) any contract or other financial transaction, or

(b) any procedure undertaken by the government with respect to a contract or other financial transaction

to which the failure to comply with section 10 relates, but the transaction or procedure is voidable at the instance of the government before the expiration of 2 years from the date of the decision authorizing the transaction, except as against any person who or organization that acted in good faith and without actual notice of the failure to comply with section 10.

Application for restitution

13 Despite anything in this Act, if any person, whether or not the person is or was a member, has realized financial gain in any transaction to which a violation of this Act relates, any other person affected by the financial gain, including the government or a government agency, may apply to the Supreme Court for an order of restitution against the person who has realized the financial gain.

Commissioner

14 (1) There must be appointed a commissioner who is an officer of the Legislative Assembly.

(2) On the motion of the Premier in the Legislative Assembly and on the recommendation of 2/3 of the members present, the Lieutenant Governor in Council must appoint the person so recommended to the office of commissioner.

(3) The commissioner holds office for a term of 5 years and may be reappointed for a further term or

terms.

(4) The commissioner may be removed or suspended before the end of the term of office by the Lieutenant Governor in Council for cause on the recommendation of the Legislative Assembly.

(5) The commissioner must be paid compensation as may be set by the Lieutenant Governor in Council.

(6) If

(a) the commissioner is removed or suspended or the office of the commissioner becomes vacant when the Legislature is sitting but no recommendation under this Act is made by the Legislative Assembly before the end of that session, or

(b) the commissioner is suspended or the office of the commissioner is or becomes vacant when the Legislature is not sitting,

the Lieutenant Governor in Council may appoint an acting commissioner.

(7) The appointment of an acting commissioner under this section terminates

(a) on the appointment of a new commissioner under subsection (2),

(b) at the end of the period of suspension of the commissioner, or

(c) immediately after the expiry of 20 sitting days after the day on which he or she was appointed,

whichever the case may be and whichever occurs first.

(8) The commissioner may employ or retain persons that the commissioner considers necessary and may

(a) specify their duties and responsibilities, and

(b) establish their remuneration and other terms and conditions of employment, or retainer.

(9) The *Labour Relations Code* and the *Public Service Labour Relations Act* do not apply to a person employed or retained under subsection (8).

(10) [Repealed 1999-44-85.]

Annual report

15 The commissioner must report annually on the affairs of his or her office to the Speaker of the Legislative Assembly who must cause the report to be laid before the Legislative Assembly.

Disclosure statement

16 (1) Every member must, within 60 days of being elected, and after that annually, file with the commissioner a confidential disclosure statement in the form prescribed by the regulations.

(2) Subject to subsection (2.1), the disclosure statement must contain

(a) a statement of the nature of the assets, liabilities and financial interests of the member, the member's spouse and minor children, and private corporations controlled by any of them, and

(b) any other information that is prescribed by the regulations to be contained in the disclosure statement.

(2.1) The disclosure statement of a member of the Executive Council who has complied with section 9 (1) (b) by entrusting his or her business to one or more trustees need not contain a statement of the nature of the assets, liabilities and financial interests contained in the trust.

(3) After filing a disclosure statement, the member, and the member's spouse if the spouse is available, must meet with the commissioner to ensure that adequate disclosure has been made and to obtain advice from the commissioner on the member's obligations under this Act, and the commissioner may recommend the manner by which the member will comply with those obligations.

(4) If any asset, liability or financial interest described in the disclosure statement relates to a corporation, the commissioner must ascertain whether any other corporation is an affiliate of the first named corporation, as determined under section 2 (1) to (4) of the *Business Corporations Act*.

(5) If the commissioner determines that there is an affiliate of the first named corporation, he or she must

(a) advise the member of the fact, in writing, and

(b) mention the fact in the public disclosure statement prepared under section 17.

(6) After filing a disclosure statement, the member must continue to disclose any material change in the assets, liabilities and financial interests of the member, the member's spouse and minor children and private corporations controlled by any of them by filing a statement of material change with the commissioner within 30 days of the material change.

(7) In subsection (6), **"material change"** means a material change as defined in the regulations.

Public disclosure statement

17 (1) After meeting with the member, and with the member's spouse if the spouse is available, the commissioner must prepare a public disclosure statement containing all relevant information provided by the member, and by the member's spouse if the spouse met with the commissioner, in respect of the member, the spouse and minor children, except

(a) the municipal address or legal description of land that is primarily for the residential or recreational use of the member or the member's spouse or minor children, and

(b) personal property used for transportation or for household, educational, recreational, social or aesthetic purposes.

(2) The public disclosure statement must contain a statement of any gifts or benefits that have been disclosed to the commissioner under section 7 (3).

(3) The commissioner must, as soon as is practicable, file the public disclosure statement with the Clerk of the Legislative Assembly who must

(a) make the statement available to any person for inspection without charge and during normal business hours, and

(b) provide a copy of the statement on payment of a reasonable copying charge.

Commissioner's opinions and recommendations

18 (1) A member may request, by application in writing, that the commissioner give an opinion or recommendation on any matter respecting the obligations of the member under this Act or under section 25 of the *Constitution Act*.

(2) The commissioner may make such inquiries as the commissioner considers appropriate and provide the member with a written opinion and recommendations.

(3) If the commissioner is of the opinion that a member has or may have a conflict of interest, the commissioner may, in the recommendations, specify the time by which the member must resolve the matter.

(4) The opinion and recommendations of the commissioner are confidential, but may be released by the member or with the consent of the member in writing.

(5) If the commissioner determines that a member has not contravened this Act, that determination is final for all purposes of the Act and any proceeding under the Act, so long as the facts presented by the member to the commissioner under subsection (1) were accurate and complete.

Commissioner's opinion on referred question

19 (1) A member who has reasonable and probable grounds to believe that another member is in contravention of this Act or of section 25 of the *Constitution Act* may, by application in writing setting out the grounds for the belief and the nature of the contravention alleged, request that the commissioner give an opinion respecting the compliance of the other member with the provisions of this Act.

(2) A member of the public who has reasonable and probable grounds to believe that there has been a contravention of this Act or of section 25 of the *Constitution Act* may, by application in writing setting out the grounds for the belief and the nature of the contravention alleged, request that the commissioner give an opinion respecting the alleged contravention.

(3) The Executive Council may request that the commissioner give an opinion on any matter respecting the compliance of a member of the Executive Council or a parliamentary secretary with the provisions of this Act or of section 25 of the *Constitution Act*.

(4) The Legislative Assembly may request that the commissioner give an opinion on any matter respecting the compliance of a member with the provisions of this Act or of section 25 of the *Constitution Act*.

Special assignments

20 At the request of the Lieutenant Governor in Council or the Legislative Assembly, the commissioner may undertake special assignments that he or she considers appropriate.

Inquiry

21 (1) On receiving a request under section 19, and on giving the member concerned reasonable notice, the commissioner may conduct an inquiry.

(2) For the purposes of preparing an opinion under section 19 or conducting a special assignment under section 20, the commissioner may order a person to do either or both of the following:

(a) attend, in person or by electronic means, before the commissioner to give evidence on oath or affirmation or in any other manner;

(b) produce for the commissioner a record or thing in the person's possession or control.

(2.1) An order under subsection (2) must be in the form of a summons, served on the person by personal delivery or registered mail to the person's last known address.

(3) If the request for an opinion is made under section 19 (1), the commissioner must report his or her opinion to the Speaker of the Legislative Assembly who must cause the report to be laid before the Legislative Assembly if it is in session or, if not in session, to the Clerk of the Legislative Assembly who must send a copy of it to all members of the Legislative Assembly.

(4) If it appears to the commissioner that the report may adversely affect the member, the commissioner must inform the member of the particulars and give the member the opportunity to make representations, either orally or in writing, at the discretion of the commissioner, before the commissioner finalizes the report.

(5) If the commissioner is of the opinion that the member making the application under section 19 (1) had no reasonable and probable grounds for making it, the commissioner may state that in his or her report, and if he or she does so, the commissioner must report the matter to the Speaker who must lay the report before the Legislative Assembly and the Legislative Assembly may, after considering the matter, hold the member in contempt of the Legislative Assembly.

(6) If the request for an opinion is made under section 19 (3), the commissioner must report his or her opinion to the Secretary of the Executive Council.

Power to enforce summons and punish for contempt

21.1 (1) The commissioner may make an order finding a person to be in contempt, and may impose a fine on or commit the person for contempt, if the person has been served with a summons under section 21 and fails or refuses to do any of the following:

(a) attend before the commissioner;

(b) take an oath or make an affirmation;

(c) answer questions;

(d) produce records or things in the person's possession or control.

(2) The commissioner may call on the assistance of any peace officer to enforce an order made under this section, and, if called on, the peace officer may take any action that is necessary to enforce the order and may use such force as is reasonably required for that purpose.

Penalties

22 (1) If the commissioner finds

(a) after an inquiry under section 21 that a member has contravened section 3, 4, 5, 7, 8, 9 or 10 (1), or

(b) that a member has refused to file a disclosure statement within the time provided by section 16 or that a member has failed to comply with a recommendation of the commissioner under section 16 (3) or 19,

the commissioner may recommend, in a report that is laid before the Legislative Assembly

(c) that the member be reprimanded,

(d) that the member be suspended for a period specified in the report,

(e) that the member be fined an amount not exceeding $5 000, or

(f) that the member's seat be declared vacant until an election is held in the member's electoral district.

(2) The Legislative Assembly must consider the commissioner's report and respond to it as subsection (3) provides

(a) within 30 days after it is laid before the Legislative Assembly, or

(b) within 30 days after the next session begins if the Legislative Assembly is not in session.

(3) The Legislative Assembly may order the imposition of the recommendation of the commissioner under subsection (1) or may reject the recommendation, but the Legislative Assembly must not further inquire into the contravention or impose a punishment other than the one recommended by the commissioner.

Protection of commissioner

23 No action of any kind lies against the commissioner for anything he or she does under this Act.

Appropriation

24 Money required for the operation of the office of the commissioner may be paid out of the consolidated revenue fund.

Offence Act

25 Section 5 of the *Offence Act* does not apply to this Act.

Power to make regulations

26 Subject to the approval of the Lieutenant Governor in Council, the commissioner may make regulations prescribing any matter that is contemplated in this Act to be prescribed by regulations.

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APPENDIX B BUDGET PROPOSAL AND COMMITTEE REVIEW/RECOMMENDATION – FISCAL 2009/10-2011/12

BRITISH COLUMBIA

Office of the Conflict of Interest Commissioner

BUDGET PROPOSAL

Fiscal 2009-2010
2010-2011
2011-2012

Presented to
The Select Standing Committee on Finance and Government Services
Legislative Assembly of British Columbia

November 26, 2008

I. BACKGROUND INFORMATION

It is a pleasure to provide the Committee with this budget proposal for the fiscal years 2009-2010 through 2011-2012 and to meet with the Committee for the first time since my appointment on January 1st, 2008.

As context for your consideration of the proposal, here is some basic information about the organization of our office: I am assisted by two Executive Assistants who share one full-time position, and by a part-time (.6) Researcher. I perform my duties on a part-time basis. In its Second Report of December, 2007, this Committee recommended that my salary be equivalent to a 0.75 FTE position with a benefits package similar to that of other Independent Officers. The Committee's recommendation was accepted by the Legislature.

The hard costs of salaries and benefits amount to 78% of our current budget. The support staff salaries have been consistent for many years. The Commissioner's salary now is based on 75% of the salary paid to the Chief Judge of the Provincial Court of British Columbia, from time to time.

Since my appointment, I have had the pleasure of meeting with every Member of the House for the purpose of discussing and preparing the Public Disclosure Statements which will be filed with the Clerk of the House on Friday, November 28, 2008. I am pleased to report that I have received cooperation and assistance in this process from all Members and their offices. I also

meet often with Members who have confidentially sought my advice with respect to various potential conflict of interest issues. My responsibilities also include processing complaints and providing opinions under the various sections of the *Members' Conflict of Interest Act*.

This legislation was conceived and the office was set up in order to give meaning to the public's right to know that Members of the Legislature conduct their business only in the public interest, free from conflict of interest. Based on my experience so far, I am satisfied that the public can have confidence that the system is working.

The office files its report of annual activities on a calendar year basis. The last annual report was prepared by my predecessor as at December 31, 2007 and tabled in the Legislature on March 31, 2008. The 2008 Annual Report will be prepared and filed before the end of the current fiscal year.

Operationally, Members of the Committee will be interested to know that in the course of this fiscal year information systems in the office have been established in some areas and enhanced in others. Capital expenditures have been made to acquire equipment and services to gather, store and retrieve information that has resided in the office since 1990. These efforts are continuing. In the current fiscal year, we have also established an office in the lower mainland to provide easier access for the Members and the public and to help manage travel expense costs. At the same time, the practices and procedures used in the office are being reviewed so that the flow of information in and out of the office is managed in the most cost effective way.

Continuing consideration is also given to the experience in other jurisdictions where that experience is relevant to our situation and legislative imperatives.

The proposed budget contemplates that our staffing resources and information technology will continue to be enhanced, so that our ability to respond to both confidential and public requests in a timely way will be increased. The addition of these permanent resources will better enable us to do our work and to provide us with the necessary information resources.

I respectfully request the Committee's approval in full to the budgetary requests that follow.

November 25, 2008

_____

Paul D. K. Fraser, Q.C.

II. RESOURCE SUMMARY

Fiscal Year 2007-2008

The office met its budget target for fiscal year 2007-2008, despite increased salary costs.

Current Fiscal Year 2008-2009

The original budget request made to this Committee by my predecessor for the current fiscal year was:

Salaries and Benefits	$237,000
Operating Costs	73,000
Other Expenditures	12,000
Total	$322,000

The request was considered and reviewed by the Committee at a hearing on November 26, 2007. The numbers contributing to the salaries and benefits total of $237,000 were as follows:

Commissioner's Salary	$108,000
Staff Salaries	$99,000
Benefits	$30,000

It was acknowledged that the budget request was made on the basis that the then Commissioner was part-time as a 0.50 FTE position and that the salaries and benefits numbers would obviously be affected if the position did not continue to be half-time.

In its Second Report of December, 2007, the Committee recommended an increase of $62,000 to the budget request on the basis that the Commissioner's salary would be equivalent to a 0.75 FTE position. Within the office's budget, the $62,000 was added entirely to the salaries and benefits budgetary category which now constitutes 78% of the total budget. The total amount approved by the Committee was $384,000.

Unfortunately, the amount of the increase was not sufficient to cover the actual cost of salary and benefits paid to the Commissioner based on the formula tied to the salary of the Chief Provincial Court in British Columbia. That salary increased in April 2008 and with retroactive pay and benefits similar to other Independent Officers, the salary now paid to the Commissioner now exceeds by approximately $21,000 the increase of $62,000 granted by the Committee. The resulting funding gap for salaries and benefits in the current year is $21,000.

On the operating side, the annual cost of the lower mainland office (which is un-staffed – but electronically connected to the Victoria office) is approximately $15,000. The spending in the category of "other expenditures" will likely be within the budget.

In the result, my best expectation is that in this current fiscal year we may exceed our budget by approximately $36,000 or 9.1%, with total funds likely expended of $420,000.

III BUDGET PROPOSAL FOR FISCAL YEARS 2009/10 through 2011/12

Salaries and Benefits	$325,000
Operating Costs	$ 95,000
Other Expenditures	$ 20,000
	$440,000

These numbers take into account the expected experience of the current fiscal year. The ongoing hard costs are known for salaries and benefits, assuming the present staffing levels and include committed increases for the exempt staff and the Commissioner.

The estimate of Operating Costs takes into account rent increases and any market driven costs. The numbers in both this category and in the Other Expenditures category reflect the anticipated costs involved in retaining counsel from time to time, to assist in making inquiries, preparing opinions or recommendations respecting compliance by Members with the Act.

The potential increase of $20,000 over the total expected expenditures in the current fiscal year, represents any increase of 4.7% over this current year's expected results.

All of which is respectfully submitted on November 26, 2008.

EXCERPT FROM

SELECT STANDING COMMITTEE ON FINANCE AND GOVERNMENT SERVICES'

ANNUAL REVIEW OF THE BUDGETS OF THE

INDEPENDENT OFFICES OF THE LEGISLATIVE ASSEMBLY

DECEMBER 2008

Office of the Conflict of Interest Commissioner

"The proposed budget contemplates that our staffing resources and information technology will continue to be enhanced, so that our ability to respond to both confidential and public requests in a timely way will be increased." (Paul Fraser, QC, Conflict of Interest Commissioner)

Background

The Office of the Conflict of Interest Commissioner is responsible for assisting Members of the Legislative Assembly and Cabinet Ministers in reconciling their private interests and public duties so as to act with integrity and impartiality. Vote 3 of the annual *Estimates* provides for the operating expense of the office. Last year, the Finance Committee set the annual operating budget at $384,000 for the next three fiscal years.

Budget Proposal, Fiscal 2010-2012

On November 26, 2008, the Finance Committee met to review the office's budget proposal for the next three fiscal years. Representing the office was Paul Fraser, QC, Conflict of Interest Commissioner, who was appointed in January 2008.

The Conflict of Interest Commissioner began his presentation by informing the Finance Committee of an expected shortfall of $21,000 in the office's current budget. This shortfall is related to the decision made by the Finance Committee last year to increase the Commissioner's salary from 0.5 to 0.75 FTE and to offer him the same benefits package available to other statutory officers. The Commissioner reported that the increase has not been sufficient to cover the actual cost of his salary and benefits, and the gap is $21,000.

Next, the Commissioner described the budgetary implications of the changes in the office's operations since he assumed the position in January 2008. Establishing or enhancing information systems have required capital expenditures to acquire equipment and services. This year, a new satellite office has been established in Surrey, which is linked electronically to the main Victoria office. It will provide easier access for MLAs and help manage travel expense costs; and the start-up costs amount to $15,000.

As a result of the new office and the salary gap, discussed above, the Conflict of Interest Commissioner reported that for the current fiscal year, the office may exceed its budget by $36,000. For the next three years, the Commissioner requested an annual budget allocation of $440,000, representing a $54,000 increase (or a 14% lift) in order to enable the office to cover mandated salary increases for the Commissioner and his staff, and to finish the upgrading of the information systems.

Committee Inquiry

The committee inquiry focused on the office's anticipated budget shortfall and the establishment of the satellite office in Surrey.

Budget Shortfall

Members inquired about the procedure involved to remedy a shortfall in an independent office's operating budget. The Clerk to the Committee clarified the situation by explaining that the Finance Committee could choose to recommend to the House that the overrun be approved. If accepted, a supplementary estimate could be introduced in the next session, prior to the end of the fiscal year (March 31, 2009).

Satellite Office

Another theme of the committee inquiry was the Conflict of Interest Commissioner's business decision to establish a satellite office in Surrey without informing the Finance Committee in advance. The Chair explained that the Finance Committee takes its oversight role very seriously and therefore expects, as part of its mandate, to be apprised of budgetary matters affecting each independent office.

In response, the Commissioner acknowledged that with hindsight, he should have informed the Committee. While the start-up costs ($15,000) have not been recouped yet, he did believe that the office would be cost-effective in the future by reducing travel expense costs.

Conclusions and Recommendations

The Finance Committee recognizes that the Office of the Conflict of Interest Commissioner is undergoing a transition during the current fiscal year. To deal with the anticipated shortfall in the operating budget, we encourage the Commissioner to approach the Committee once the actual amount is known.

Regarding next year's budget, the Committee considers the request for an additional $56,000 to be reasonable in the current circumstances. In line with other offices, this increase will cover the non-discretionary increases in salaries and benefits and will also enable the office upgrading to be completed.

The Finance Committee recommends that:

- **the annual appropriation for the operating expense of the Office of the Conflict of Interest Commissioner be increased to $440,000 in each of the next three fiscal years.**

APPENDIX C BUDGET PROPOSAL AND COMMITTEE REVIEW/RECOMMENDATION – FISCAL 2010/11-2012/13

BRITISH COLUMBIA

Office of the
Conflict of Interest Commissioner

BUDGET PROPOSAL

2010/11 – 2012/13

Office of the
Conflict of Interest Commissioner
BUDGET PROPOSAL
2010/11 – 2012/13

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Statement of Operations

	2008/09 Budget $	2008/09 Actual $	2009/10 Budget $
Funding			
Voted appropriation	384,000	384,000	440,000
Other authorizations [1]	36,000	29,978	
Total funding	420,000	413,978	440,000
Expenses			
Employee Salaries	121,000	107,590	105,000
Employee benefits	30,000	25,639	28,000
Officer salary	150,000	192,944	195,000
	301,000	**326,173**	**328,000**
Travel	25,000	19,323	26,000
Centralized management support services	19,000	25,072	28,000
Professional services	12,000	12,638	8,000
Information systems - operating	5,000	3,558	5,000
Office and business expenses	10,000	12,390	15,000
Statutory advertising	0	0	1,000
Utilities, materials and supplies	2,000	274	1,000
Amortization expenses	3,000	0	0
Building occupancy charges (non-ARES)	0	14,550	8,000
Other expenses	7,000	0	20,000
	83,000	**87,805**	**112,000**
Total	**420,000**	**413,978**	**440,000**
Funding Returned		**6,022**	

Note 1: Represents COIC's approved access to Contingency Vote for $36,000. Actual expended from the contingeny vote was $29,978. Expenses pertained to the lease charges for the Surrey office and Commissioner's salary and benefits.

Ongoing Operating Budget by Standard Object (STOB)

		2009/10 Budget $	2010/11 Planned $	2011/12 Planned $	2012/13 Planned $
50	Employee salaries	105,000	93,940	96,289	98,696
52	Employee benefits	28,000	23,560	24,072	24,674
54	Officer salary	195,000	202,000	207,050	212,226
57	Travel [1]	26,000	24,000	24,600	25,215
59	Centralized management support serv [2]	28,000	-	-	-
60	Professional services	8,000	38,400	39,360	40,344
63	Information systems - operating [3]	5,000	38,700	39,668	40,659
65	Office and business expenses	15,000	15,000	15,375	15,759
68	Statutory advertising & publications	1,000	1,000	1,025	1,051
69	Utilities, materials and supplies	1,000	1,000	1,025	1,051
75	Building occupancy charges	8,000	35,000	35,875	36,772
85	Other expenses-IMB support charges [4]	20,000	15,000	15,375	15,759
	Total operating budget [5]	**440,000**	**487,600**	**499,713**	**512,206**

Notes

1 Includes Canadian Conflict of Interest Network (CCOIN) Conference

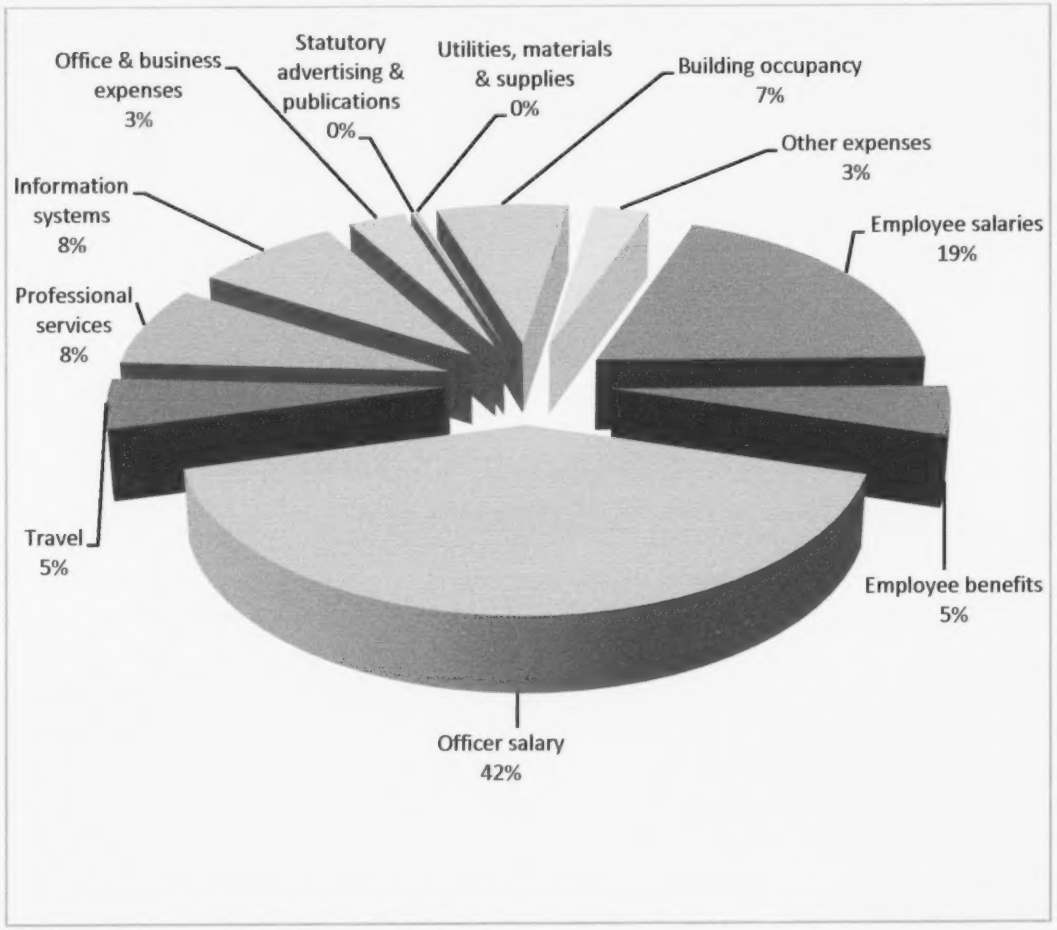
2 As per direction from Treasury Board, effective fiscal 2010/11, Accommodation and Real Estate Services' (ARES) building occupancy charges (20,000) are reallocated to STOB 75; and Workplace Technology Services' (WTS) support services fixed charges ($8,000) are reallocated to STOB 63

3 Includes new electronic filing system, new records management system, and new copier lease

4 Information Management Branch (technical support) charges amount to $10,800

5 2011/12 and 2012/13 -- all STOBS are increased by 2.5% excluding STOB 52

2010/11 Budget by Expenditure Type



2010/11 Budget Request

Notes		09/10 Budget $	10/11 Planned $	New Money Request $
1	Electronic Disclosure Filing System	-	15,000	15,000
2	CCOIN Conference	-	2,800	2,800
3	Personnel Reorganization	-	14,800	14,800
4	Officer Salary Increase	-	5,100	5,100
5	Copier Lease	2,800	4,000	1,200
6	Records Management System		8,700	8,700
		2,800	50,400	**47,600**

1. Implement a new database for electronic filing system for MLA disclosure forms.

2. Travel expenses for Executive Coordinator to attend annual CCOIN Conference in Toronto. Attendance required for educational purposes and planning/preparation costs for hosting the Conference in September 2011/12.

3. Net increase as a result of personnel reorganization to enhance professional research and communication functions and to provide supplemental clerical and document support.

4. 2.5% increase in Officer's salary effective April 1, 2010.

5. Current copier lease expires April 1, 2010; new multifunction device to be leased through Workplace Technology Services (WTS) and will include scanning capabilities in compliance with government security standards.

6. Implement a new records management system, including the electronic indexing and storage of documents, the establishment of a research database, and user training for staff.

EXCERPT FROM

SELECT STANDING COMMITTEE ON FINANCE AND GOVERNMENT SERVICES'

ANNUAL REVIEW OF THE BUDGETS OF THE

INDEPENDENT OFFICES OF THE LEGISLATIVE ASSEMBLY

DECEMBER 2009

Office of the Conflict of Interest Commissioner

> *"The Office really has two functions, broadly. One is service in the public interest. The other is service to the Members themselves. Those two things are equally important."*
> (Paul Fraser, Q.C., Conflict of Interest Commissioner for British Columbia)

Background

The Office of the Conflict of Interest Commissioner is responsible for assisting Members of the Legislative Assembly and Cabinet Ministers in reconciling their private interests and public duties so as to act with integrity and impartiality. Vote 3 of the annual *Estimates* provides for the operating expense of the Office. Last year, the Finance Committee recommended the annual operating budget be $440,000 in each of the next three fiscal years.

Budget Proposal, 2010/11-2012/13

On November 25, 2009, the Finance Committee met to review the Office's budget proposal for the next three fiscal years. Representing the Office were the Conflict of Interest Commissioner, Paul Fraser, Q.C. and Daphne Thompson, Executive Coordinator.

The Conflict of Interest Commissioner began his presentation by outlining the Office's mandate, the vision of a paperless office, and the office structure since the recent personnel reorganization. He then reported that the Office is forecast to finish the current fiscal year within its current allocation – assuming that no major investigations will be required.

Turning to next year's operating budget, the Conflict of Interest Commissioner requested an operating budget of $487,600, representing a net increase of $47,600 (or a 11% lift). Planned reductions amounting to $50,500 would be offset by the following increases totalling $98,100: Commissioner's salary ($7,000); professional services (part-time legal research) ($30,400); information systems – operating (new electronic filing system, new records management system and new copier lease): $33,700; and building occupancy charges ($27,000).

Committee Inquiry

The committee inquiry focused on building occupancy charges and the new information systems. Members also asked specific questions about the new copier lease arrangement and office statistics.

Building occupancy charges

In response to a question about building occupancy charges, the Commissioner explained that the rent is $14,400 for the satellite office in Surrey (and $20,000 for the main office in Victoria). He also mentioned that his use of the Surrey satellite office has resulted in cost savings of $5,500 in the travel budget for this fiscal year.

Information systems

The Finance Committee sought clarification of the planned request for $38,700 in 2010/11 to finance new electronic filing and records management systems, asking if this was a capital cost or a type of operating expense. In follow-up correspondence, the Commissioner explained that "the ongoing base operating cost portion is $15,000; the one-time capital cost portion is $23,700." The breakdown of one-time capital costs is $15,000 for the electronic disclosure filing system and $8,700 for the records management system.

Members also asked the Commissioner to explain how a "hold-the-line" budget would impact the delivery of services to MLAs. The Commissioner responded that it would mean continuing to effectively export the real problem into the future, and that they would not be as timely in the delivery of services that they would like to be. He added that service delivery would improve if his Office is able to scan documents and to index and store them appropriately for retrieval.

Conclusions and Recommendations

After due consideration, the Finance Commmittee has decided to recommend a "hold-the-line" budget for the Office of the Conflict of Interest Commissioner. After hearing from the Commissioner, we believe he has some latitude within the existing appropriation that would accommodate changes to office operations.

The Finance Committee recommends that:

- the annual appropriation for the operating expense of the Office of the Conflict of Interest Commisssioner be $440,000 in each of the next three fiscal years.